

HOUSE BILL 2106
By Shepard

AN ACT to amend Tennessee Code Annotated, Title 68,
relative to the "Rural Health Availability Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Rural Health Availability Act."

SECTION 2. The general assembly finds and declares the following:

(1) In rural areas, access to health care is limited and the quality of health care is adversely affected by inadequate reimbursement and collection rates and difficulty in recruiting and retaining skilled health professionals.

(2) There is limited, if any, overlap in the geographic service areas of Tennessee rural hospitals.

(3) Rural hospitals' financial stability is threatened by patient migration to general acute care and specialty hospitals in urban areas.

(4) The availability of quality health care in rural areas is essential to the economic and social viability of rural communities.

(5) Cooperative agreements among rural hospitals would improve the availability and quality of health care for Tennesseans in rural areas and enhance the likelihood that rural hospitals can remain open.

SECTION 3. For the purposes of this act, the following terms shall have the following meanings:

(1) "Act" means the Rural Health Availability Act.

(2) "Affected person," with respect to any application for a certificate of public advantage, means:

(A) The applicant(s);

(B) Any person residing within the geographic service area of an applicant;

(C) Health care purchasers who reimburse health care facilities located in the geographic service area of an applicant;

(D) Any other person furnishing goods or services to, or in competition with, an applicant; or

(E) Any other person who has notified the department in writing of such person's interest in applications for certificates of public advantage and has a direct economic interest in the decision. Notwithstanding the foregoing, persons from other states who would otherwise be considered "affected persons" are not included, unless that other state provides for similar involvement of persons from Tennessee in a similar process in that state.

(3) "Certificate of public advantage" means the formal written approval, including any conditions or modifications of a cooperative agreement by the department.

(4) "Cooperative agreement" means a contract, business or financial arrangement, or any other activities or practices among two (2) or more rural hospitals for the sharing, allocation, or referral of patients; the sharing or allocation of personnel, instructional programs, support services and facilities, medical, diagnostic or laboratory facilities, procedures, equipment or other health care services; the acquisition or merger of assets among or by two (2) or more rural hospitals, including agreements to negotiate jointly with respect to price or other competitive terms with suppliers. The term "cooperative agreement" includes any amendments thereto with respect to which a certificate of public advantage has been issued or applied for or with respect to which a

certificate of public advantage is not required, unless the context clearly requires otherwise.

(5) "Department" means the department of health created under section 4-3-1801.

(6) "Hospital" has the meaning set forth in section 68-11-201.

(7) "Rural area" means an area with a population density of less than one hundred (100) individuals per square mile; a municipality or county with a population of less than seven thousand five hundred (7,500) individuals; or an area defined by the most recent United States Census as rural.

(8) "Rural hospital" means a private or community hospital having at least one (1) but no more than seventy-five (75) licensed acute-care beds that is located in a rural area.

(9) "State" means the state of Tennessee.

The use of a singular term in this section includes the plural of that term, and the use of a plural term in this section includes the singular of that term, unless the context clearly requires another connotation.

SECTION 4.

(a) A rural hospital and any corporation, partnership, joint venture or any other entity, all of whose principals are rural hospitals, may negotiate and enter into cooperative agreements with other such persons in the state, subject to receipt of a certificate of public advantage governing the agreement as provided in this act.

(b) Parties to a cooperative agreement may apply to the department for a certificate of public advantage governing that cooperative agreement. The application must include an executed written copy of the cooperative agreement and describe the nature and scope of the cooperation in the agreement and any consideration passing to

any party under the agreement. Within thirty (30) days of receipt of the application, the department may request additional information as may be necessary to complete the application. The applicant has thirty (30) days from the date of the request to submit the additional information. If the applicant fails to submit the requested information within the thirty-day period, or any extension of time granted by the department, the application is deemed withdrawn. The department may require an application fee from the submitting parties sufficient to cover the cost of processing the application.

(c) The department shall review the application in accordance with the standards set forth in subsection (d) of this section. The department shall give notice of the application to members of the public who reside in the service areas of the applicant hospitals, which may be provided through newspapers of general circulation or public information channels. If requested by an affected person within thirty (30) days of the giving of the public notice, the department may hold a public hearing in accordance with rules promulgated by the commissioner. The department shall grant or deny the application within sixty (60) days after receipt of a completed application or from the date of the public hearing, if one is held, and that decision, along with any conditions of approval, must be in writing and must set forth the basis for the decision. The department may establish conditions for approval that are reasonably necessary to ensure that the cooperative agreement and the activities engaged under it are consistent with the intent of this act and to ensure that the activity is appropriately supervised and regulated by the state. The department shall furnish a copy of the decision to the applicants and any affected persons who have asked in writing to be notified.

(d) The department shall issue a certificate of public advantage for a cooperative agreement if it determines that:

(1) Each of the parties to the cooperative agreement is a rural hospital or is a corporation, partnership, joint venture or other entity all of whose principals are rural hospitals;

(2) The geographic service area of the rural hospitals who are parties to the agreement do not overlap significantly; and

(3) The cooperative agreement is likely to result in one or more of the following benefits:

(A) Enhancement of the quality of hospital and hospital-related care provided to Tennessee citizens;

(B) Preservation of hospital facilities and health care in rural areas;

(C) Gains in the cost-efficiency of services provided by the hospitals involved;

(D) Encouragement of cost-sharing among the hospitals involved;

(E) Improvements in the utilization of hospital resources and equipment; or

(F) Avoidance or reduction of duplication of hospital resources or expenses, including administrative expenses.

(e) The department shall actively monitor and regulate agreements approved under this act and may request information whenever necessary to ensure that the agreements remain in compliance with the conditions of approval. The department may charge an annual fee to cover the cost of monitoring and regulating these agreements. During the time the certificate is in effect, a report on the activities under the cooperative agreement must be filed with the department every two (2) years. The department shall

review the report in order to determine that the cooperative agreement continues to comply with the terms of the certificate of public advantage.

(f) The department shall revoke a certificate of public advantage by giving written notice to each party to a cooperative agreement with respect to which the certificate is being revoked, if it finds that:

(1) The cooperative agreement or activities undertaken by it are not in substantial compliance with the terms of the application or the conditions of approval;

(2) The likely benefits resulting from the cooperative agreement no longer exist; or

(3) The department's approval was obtained as a result of intentional material misrepresentation to the department or as the result of coercion, threats or intimidation toward any party to the cooperative agreement.

(g) The department shall maintain on file all cooperative agreements for which certificates of public advantage remain in effect. A party to a cooperative agreement who terminates or withdraws from the agreement shall notify the department within fifteen (15) days of the termination or withdrawal. If all parties terminate their participation in the cooperative agreement, the department shall revoke the certificate of public advantage for the agreement.

(h) The parties to a cooperative agreement with respect to which a certificate of advantage is in effect must notify the department of any proposed amendment to the cooperative agreement, including an amendment to add an additional party but excluding an amendment to remove or to reflect the withdrawal of a party, before the amendment takes effect. The parties must apply to the department for a certificate of public advantage governing the amendment and the department shall consider and rule

on the application in accordance with the procedures applicable to cooperative agreements generally.

(i) The department may promulgate rules and regulations in accordance with the provisions of title 4, chapter 5, as in effect from time to time to implement the provisions of this act, including any fees and application costs associated with the monitoring and oversight of cooperative agreements approved under this act.

(j) A dispute among the parties to a cooperative agreement concerning its meaning or terms is governed by the principles of contract law or any other applicable law.

SECTION 5. Any applicant aggrieved by a decision of the department under this act shall be entitled to judicial review in accordance with the provisions of Tennessee Code Annotated, Section 4-5-322.

SECTION 6. Nothing in this act shall exempt a hospital from compliance with the provisions of Tennessee Code Annotated, Title 68, Chapter 11, Part 16, concerning certificates of need.

SECTION 7. This act shall take effect July 1, 2005, the public welfare requiring it.